

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RECO N. SIMMONS,

Plaintiff,

v.

Case No. 2:18-cv-11984
Hon. George Caram Steeh

ERICA HUSS,

Defendants.

_____ /

**ORDER DENYING PETITIONER’S MOTION
FOR RECONSIDERATION [Dkt. 11]**

On February 7, 2019, the Court denied Petitioner’s motion to stay this case on the grounds that Petitioner failed to show that his unexhausted claims were not plainly meritless and because he failed to demonstrate “good cause” for not previously raising the claims in the state courts. Before the Court is Petitioner’s motion for reconsideration in which he elaborates on his unexhausted claims in an attempt to show that they are not plainly meritless.

Pursuant to Local Rule 7.1(h), a party seeking reconsideration must demonstrate (i) a “palpable defect” by which the court and the parties have been “misled,” and (ii) that “correcting the defect will result in a different disposition of the case.” E.D. Mich. L.R. 7.1(h)(3). A “palpable defect” is an

error that is “obvious, clear, unmistakable, manifest or plain.” *United States v. Cican*, 156 F. Supp. 2d 661, 668 (E.D. Mich. 2001).

Petitioner’s motion for reconsideration completely fails to address his own failure to file a motion for post-conviction review in the state courts raising his unexhausted claims before the statute of limitations posed a concern. Indeed, his motion claims that the unexhausted claims “are longstanding, open and obvious issues . . . and from a casual reading of the record they jump out at you.” Dkt. 11, at 16. While an allegation of ineffective assistance of appellate counsel may explain the failure to raise the claims on direct appeal, it does not speak to Petitioner’s own inaction. He fails to explain why he waited until a little more than one week remained on the period of limitations before he filed his federal habeas petition.

Accordingly, it is **ORDERED** that Petitioner's motion for reconsideration, Dkt. 9, is **DENIED**.

Dated: March 14, 2019

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on March 14, 2019, by electronic and/or ordinary mail and also on Reco N. Simmons #729615, Marquette Branch Prison 1960 U.S. Hwy 41 South, Marquette, MI 49855.

s/Barbara Radke
Deputy Clerk